

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF

NEPERA, INC.,

Respondent

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DOCKET NO. CERCLA-VIII-92-20

ORDER DENYING MOTION TO STRIKE

On July 13, 1992, Complainant submitted a motion to strike Nepera, Inc.'s response to the prehearing exchange. This motion is based upon an allegation that the response constitutes a motion to dismiss and a motion for further discovery, and does not address the prehearing exchange of information.

Respondent's opposition to the motion claims there was no intention to submit a motion to dismiss or motion for further discovery when it filed the response. According to Nepera, the response is intended to set out theories that would be raised at the end of the prehearing process.

The inclusion of possible legal theories that the Respondent may pursue is not prohibited by the prehearing exchange process. Indeed, this may be of advantage to the Complainant by its being apprised of such matters prior to hearing. In any event, the items set forth in the Nepera response will not be considered motions unless the requirements governing motions, discovery and dismissal contained in the EPA Rules of Practice (Rules), 40 C.F.R. Part 22, are met. If the Respondent wishes to present a motion to dismiss or a motion for discovery, it must comply with Section 22.16(a), as well as with Sections 22.19(f) and/or

IN THE MATTER OF NEPERA, INC., Respondent
Docket No. CWA-II-92-15

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Motion to Strike and Setting Further Procedures, dated April 8, 1993, was sent in the following manner to the addressees listed below:

Original by Regular Mail to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region II
26 Federal Plaza
New York, NY 10278


Copy by Certified Mail-Return
Receipt Requested to:

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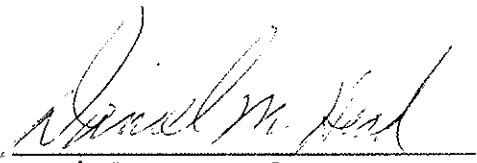

Aurora M. Jennings
Secretary

Dated: April 8, 1993
Washington, D.C.

22.20(a) of the Rules.

Moreover, while the Nepera response may not in certain aspects present a direct reply to the material in the Complainant's prehearing exchange, there is no prejudice to Complainant from inclusion of this matter in the response. In fact, as noted above, it may well be an advantage to the Complainant by being informed of Respondent's position in advance of hearing. Therefore, the Complainant's motion to strike the Nepera response is denied. In light of this, Complainant may supplement its prehearing exchange response to address the positions taken by Nepera in its response, if Complainant considers such a supplement is warranted. Any such supplemental filing by the Complainant shall be submitted within fifteen days from the Service date of this Order.

SO ORDERED.


Daniel M. Head
Administrative Law Judge

Dated:

April 5, 1993
Washington, D.C.